

Garrick S. Lew SBN 61889
600 Townsend Street, Suite 329E
San Francisco, California 94103
Telephone: (415) 575-3588
Facsimile: (415) 522-1506
gsl@defendergroup.com

Attorney for Defendant
ANTOINE DEMETRIUS SMITH

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Venue

UNITED STATES OF AMERICA,)	
)	CR 08-00110-01 DLJ
Plaintiff,)	
)	DEFENDANT'S SENTENCING
vs.)	MEMORANDUM
)	
ANTOINE DEMETRIUS SMITH,)	Date: August 1, 2008
)	
Defendant.)	

I. INTRODUCTION

On April 18, 2008, ANTOINE DEMETRIUS SMITH entered a plea of guilty to Count One of the Indictment, a violation of Title 21 U.S.C. §841(a)(1), (b)(1)(B)(iii), Possession with Intent to Distribute cocaine base. The United States Probation Office has prepared a Presentence Report (PSR) and concluded that the advisory Guideline in this case, should defendant be found eligible for Safety Valve relief pursuant to 5C1.2(a)(1)(5), is Total Offense Level 23, Criminal History Category 1. The PSR recommends the Court adopt a 46 month sentence based on the Guideline calculations in the negotiated plea agreement. Mr. ANTOINE DEMETRIUS SMITH urges the court to accept this recommendation for the reasons set forth herein.

Mr. ANTOINE DEMETRIUS SMITH objects to paragraphs 36, 37 and 38 of the PSR objects to inclusion of any Project Trojan gang references or any other "North Richmond" alleged gang affiliations in his presentence report on the grounds that defendant is not and has never been

1 a member of any street gang. Defendant contends that such allegations are speculative
2 uncorroborated hearsay, prejudicial and irrelevant to the count of conviction and requests that these
3 paragraphs be stricken from the report.

4 Mr. ANTOINE DEMETRIUS SMITH comes now before the Court requesting that the
5 Court, consistent with the dictates of applicable sentencing law, impose a sentence “sufficient, but
6 not greater than necessary”, to comply with the purposes set forth in 18 USC 3553(a) and sentence
7 Mr. ANTOINE DEMETRIUS SMITH in accordance with the Probation Officer’s recommendation
8 to 46 months, to be followed by a term of Supervised Release with appropriate conditions.

10 II. A REASONABLE SENTENCE

11 The PSR has calculated a Guideline level of 23, which is the offense level contemplated by
12 the parties in the plea agreement. The Probation Department has recommended that the court adopt
13 a sentence of 46 months which represents range reflected in the parties FRCP 11(c)(1)(C) plea
14 agreement. Defendant urges the Court to accept the recommendation of the PSR. While the Court
15 must still correctly calculate the Guidelines, it remains at liberty to accept or reject the conditional
16 plea of defendant. Defendant SMITH contends that a sentence of 46 months in this case is a
17 reasonable sentence.

18 CONCLUSION

19 For the reasons set forth herein, defendant respectfully requests that the Court adopt the
20 recommendation of the PSR and sentence defendant to 46 months at a federal correction institution
21 close to the bay area so defendant can maintain contact with his immediate family.

23 Respectfully submitted,



27 Garrick S. Lew
28 Attorney for Defendant ANTOINE DEMETRIUS SMITH